

ORIGINAL

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, DC 20554

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NOV 27 1998

In the Matter of )  
MOBILEMEDIA CORPORATION, *et al.* )  
Applicant for Authorizations and Licensee of )  
Certain Stations in Various Services )  
Applications of )  
MOBILEMEDIA CORPORATION and )  
ARCH COMMUNICATIONS GROUP, INC. )  
for Transfer of Control of Their Radio Licenses )

WT Docket No. 97-115 )  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Rep. No. LB-99-05

To: The Commission

**REPLY COMMENTS OF ARCH COMMUNICATIONS GROUP, INC.**

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**REPLY COMMENTS OF ARCH COMMUNICATIONS GROUP, INC.**

Arch Communications Group, Inc. ("Arch") hereby submits its reply comments in response to the Wireless Telecommunications Bureau's Consolidated Comments On Applications For Transfer Of Control And Petition To Terminate And For Special Relief ("Comments"), filed in the above-captioned proceeding on November 16, 1998.<sup>1</sup> At issue in this proceeding is a proposed merger between MobileMedia and Arch, in which Arch will be the surviving entity, but the majority of Arch's stock will be held by MobileMedia's unsecured creditors. Since no party has opposed grant of the applications, Arch requests expeditious action thereon.

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<sup>1</sup> A separate reply is being filed by MobileMedia Corporation, Debtor-in-Possession ("MobileMedia") with whom Arch jointly filed the transfer applications which are at issue in this proceeding.

## INTRODUCTION/SUMMARY

In its Comments, the Wireless Telecommunications Bureau (“Bureau”) made favorable findings with regard to the two threshold issues requiring resolution in this proceeding — it concluded that the transaction “appears to comply with the requirements of the *Second Thursday* doctrine,”<sup>2</sup> and it determined that the proposed merger would not have an adverse impact on competition.<sup>3</sup>

These determinations, in Arch’s view, set the stage for an immediate review and expeditious grant of the transfer applications by the full Commission. Arch requests that the *Second Thursday* and transfer application approval process be completed no later than January 15, 1999. If the parties do not receive a grant by that date, they will be unable to consummate the transaction shortly after close of the bankruptcy proceeding, which is now expected to be completed in February.<sup>4</sup>

The Bureau, however, believes that further enforcement action against MobileMedia may be warranted based on the potential of additional licensing violations which MobileMedia is in the process of investigating. The Bureau recommends that the Commission either defer action on the transfer applications pending resolution of possible enforcement issues, or condition the grant of the applications upon any enforcement action ultimately taken.

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<sup>2</sup> Comments at 10; *see infra* n.15.

<sup>3</sup> Comments at 39.

<sup>4</sup> A bankruptcy court hearing to approve MobileMedia’s disclosure statement is currently scheduled for December 10, 1998. Assuming no unforeseen obstacles arise, final bankruptcy court confirmation of the plan of reorganization is expected in early February, 1999, and the merger could be consummated soon thereafter.

Arch submits that further enforcement action against MobileMedia is not warranted for a number of reasons. First, the Bureau is apparently operating under the mistaken belief that any penalties assessed against MobileMedia prior to consummation will be borne by MobileMedia.<sup>5</sup> In fact, any such penalties would be borne *entirely* by MobileMedia's unsecured creditors — the very parties that the *Second Thursday* doctrine is designed to protect — and Arch's existing shareholders. Penalizing parties that did not engage in any wrongdoing serves no legitimate Commission interest.

Second, insofar as monetary forfeitures are intended, in part, to serve as a deterrent to wrongful actions by other licensees, the penalties already exacted on MobileMedia have clearly sent the proper signal since MobileMedia has already paid an enormous price for its violations. The company's wrongdoing has resulted in the company's licenses being designated for hearing, the suspected wrongdoers, including some of the company's most senior executives, have been dismissed, the company is in bankruptcy, and under the terms of the merger, MobileMedia's current shareholders will have their stock interests extinguished.

Third, Arch understands that the violations which MobileMedia is now reporting were uncovered in connection with a voluntary internal compliance review which MobileMedia committed to undertake shortly after the original violations were disclosed to the Commission. As such, the *Second Thursday* doctrine should eliminate the need for additional enforcement

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<sup>5</sup> Comments at 12 ("Once the transfer of control is consummated, it would be too late to take any enforcement action against MobileMedia for such violations.")

action with regard to the newly-reported violations. Any other conclusion would severely chill an already designated licensee's willingness to voluntarily undertake such a thorough analysis.<sup>6</sup>

Arch believes that a grant of the applications by the requested date without any additional enforcement action would fairly accommodate the interests of innocent parties with the Commission's legitimate interest in preserving the integrity of its licensing processes. This approach would also be consistent with Commission precedent. If the Commission determines, however, that resolution of the enforcement questions would otherwise delay a grant of the pending applications, then Arch recommends that the Commission generally adopt the Bureau's alternate proposal. In this case, the Commission should expeditiously grant the applications for transfer of control without any findings as to the import of violations that MobileMedia may now be identifying in its audit, and instead leave to a separate, later determination what, *if any*, enforcement actions will be taken once the Bureau has had adequate time to consider the full scope of the matters identified in MobileMedia's audit reports.

**I. The Transfer Applications Are Ripe For Immediate Review And Expedious Grant**

In its Comments, the Bureau made favorable findings with regard to the two threshold matters at issue in this proceeding — it concluded that the transaction “appears to

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<sup>6</sup> Consistent with its representations to the Commission, MobileMedia has assured Arch that it is devoting time and resources in an effort to complete the internal audit and file a final report by the end of December 1998. *See also* Comments at 11 (“MobileMedia has informed the Bureau that a comprehensive report on the compliance program and any possible violations of the Commission's Rules is being prepared. MobileMedia hopes to submit the report by the end of this year.”)

comply with the requirements of the *Second Thursday* doctrine,”<sup>7</sup> and it determined that the proposed merger would not have an adverse impact on competition.<sup>8</sup> This latter conclusion was based on a thorough competitive analysis undertaken pursuant to the parameters first enunciated by the Commission in its *Bell Atlantic/NYNEX* decision.<sup>9</sup> The Bureau found further that the merger “could enhance competition in paging markets because it will enable Arch to become a more effective competitor by improving its ability to market paging services nationwide,”<sup>10</sup> and that the “transfer could improve services to [MobileMedia’s] customers.”<sup>11</sup> Arch agrees with these findings in all material respects.

Arch believes that the Bureau’s acceptance of MobileMedia’s *Second Thursday* showing, coupled with its favorable findings regarding the proposed merger’s competitive impact, paves the way for an immediate review and expeditious grant of the transfer applications by the full Commission. Moreover, no party — not even the Bureau — has opposed the transaction, and there has been no suggestion that Arch is unqualified to be a licensee.<sup>12</sup> Under the circumstances, Arch believes that the Commission’s review process can be completed, and

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<sup>7</sup> Comments at 10.

<sup>8</sup> *Id.* at 20-39.

<sup>9</sup> *NYNEX Corporation and Bell Atlantic Corporation*, 12 F.C.C.R. 19985 (1997).

<sup>10</sup> Comments at 21.

<sup>11</sup> *Id.*

<sup>12</sup> On November 16, 1998, Orbital Communications Corporation submitted informal comments regarding the proposed transfer of control. The informal comments do not oppose the underlying transaction or challenge Arch’s qualifications. Rather they object to termination of the hearing as it relates to an individual not identified as one of the wrongdoers. *See* Informal Comments of Orbital Communications Corporation at 2 (Nov. 16, 1998).

action taken on the *Second Thursday* submission and the transfer applications no later than January 15, 1999. Absent action by that date, the parties will not be able to consummate the transaction shortly after close of the bankruptcy proceeding, now expected to run its course in February.

**A. The Commission Can Determine That No Further Enforcement Action Against MobileMedia Is Warranted**

Pointing to additional rule violations now being reported by MobileMedia, the Bureau recommends that the Commission “should either withhold action on [the transfer applications] pending receipt of a report detailing further violations of the Commission’s Rules by MobileMedia, or condition the grant of the application[s] upon any enforcement action the Bureau or the Commission may deem appropriate, and the payment in full by MobileMedia of any forfeiture deemed appropriate by the Bureau or the Commission.”<sup>13</sup> For the reasons explained below, further enforcement action against MobileMedia would serve no useful purpose and would be inconsistent with Commission precedent.

Contrary to the position urged by the Bureau, in other cases where a series of rule violations have been uncovered, the Commission generally permits licensees whose qualifications are in question to transfer their licenses if the public interest would be served and the transfer would not undermine the Commission’s policy of deterring violations of its rules.<sup>14</sup>

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<sup>13</sup> Comments at 1.

<sup>14</sup> *RKO General, Inc.*, 3 F.C.C.R. 5057, 5061 (1988); see *George E. Cameron Jr. Communications*, 56 Rad. Reg. 2d (P & F) 825 (1984); *Radio San Juan, Inc.*, 29 Rad. Reg. 2d (P & F) 607 (1974); *Melody Music, Inc.*, 2 F.C.C.2d 958 (1966).



Indeed, the Commission's *Second Thursday* doctrine is an outgrowth of these principles.<sup>15</sup> In essence, the Commission balances the public interest, which generally recognizes the free transferability of licenses,<sup>16</sup> and a desire to protect innocent creditors from losses by reason of a licensee's failure to abide by the rules,<sup>17</sup> with the Commission's long-term interest in deterrence of serious rule violations.<sup>18</sup> Here, an expeditious grant of the subject transfer applications to Arch (under the new ownership that will include MobileMedia's unsecured creditors) will not undermine the Commission's deterrence policy because MobileMedia has already paid an extreme price for its violations. As noted below, moreover, any additional penalties will not be borne by the wrongdoer, MobileMedia, or its shareholders, but rather by innocent creditors, the very parties that the Commission's *Second Thursday* policy is designed to protect.

The Bureau's stance on the need for additional enforcement is based, at least in part, on the belief that any penalties assessed against MobileMedia prior to consummation will

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<sup>15</sup> *Second Thursday Corporation*, 22 F.C.C.2d 515, *recon. granted in part*, 25 F.C.C.2d 112 (1970).

<sup>16</sup> *Grayson Enterprises, Inc.*, 79 F.C.C.2d 936, 939 (1980); *Cellular System One of Tulsa*, 102 F.C.C.2d 86, 90-91 (1985).

<sup>17</sup> *Second Thursday Corporation*, 22 F.C.C.2d 515, *recon. granted in part*, 25 F.C.C.2d 112 (1970); *see LaRose v. FCC*, 494 F.2d 1145 (D.C. Cir. 1974).

<sup>18</sup> *See RKO General, Inc.*, 3 F.C.C.R. at 5061; *see also Cellular System One of Tulsa*, 102 F.C.C.2d at 90-91; *George E. Cameron Jr. Communications*, 56 Rad. Reg. 2d (P & F) at 828; *Grayson Enterprises, Inc.*, 79 F.C.C.2d at 939; *Radio San Juan, Inc.*, 29 Rad. Reg. 2d (P & F) 608 (1974); *Melody Music, Inc.*, 2 F.C.C. 2d at 962-963.

be borne by MobileMedia.<sup>19</sup> The Bureau is mistaken in this regard. The merger was accurately summarized by the Bureau as a transaction in which:

the existing MobileMedia stockholders will have their stock interests extinguished, MobileMedia's secured creditors will be paid in full, the operations of MobileMedia and Arch will be merged, MobileMedia's unsecured creditors will hold the majority of the equity, and Arch's existing shareholders will hold a minority interest in the new company (the "Combined Company").<sup>20</sup>

Simply stated, MobileMedia's existing shareholders will bear no part of any fine or forfeiture that may be assessed.<sup>21</sup> Rather, because Arch is paying a fixed amount for MobileMedia, any monetary forfeiture assessed on MobileMedia will simply reduce the value of the company by the amount of the penalty, which in turn will correspondingly reduce the value of the Combined Company following consummation. This means that any financial penalties imposed on MobileMedia will be borne in their entirety by MobileMedia's unsecured creditors and Arch's existing shareholders.<sup>22</sup> The Commission's deterrence policies are not served by penalizing

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<sup>19</sup> Comments at 12 ("Second, to the extent that MobileMedia has new evidence that the Commission's Rules have been violated, the Commission may decide it is appropriate to take enforcement action against MobileMedia depending upon the number and scope of additional violations. Once the transfer of control is consummated, it would be too late to take any enforcement action against MobileMedia for such violations.")

<sup>20</sup> *Id.* at 5 (citing Letter dated October 5, 1998 from Peter D. Shields, Esq. to the Commission).

<sup>21</sup> While a MobileMedia entity will continue to hold the licenses at issue following the transfer of control, that entity's ownership will be entirely different from MobileMedia's ownership at the time any of the alleged violations occurred.

<sup>22</sup> It is also noteworthy that, as noted in the transfer applications, after the merger Arch's senior management will continue to operate the business and affairs of the Combined Company, and Arch's existing seven directors will continue to serve on the Combined Company's board of directors, joined by two directors to be nominated by two of MobileMedia's largest unsecured creditors.

parties that did not engage in wrongdoing, and penalizing such parties is contrary to the *Second Thursday* doctrine.<sup>23</sup>

Moreover, the penalties already exacted on MobileMedia have clearly satisfied the Commission's deterrence objectives. The company's licenses were designated for hearing, the suspected wrongdoers (including some senior executives) have been dismissed, the company is in bankruptcy, and under the terms of the merger, MobileMedia's current shareholders will have their stock interests extinguished.

It is also Arch's understanding that the violations which MobileMedia is now reporting were uncovered as a result of a comprehensive internal review voluntarily undertaken following discovery by MobileMedia of the initial violations which gave rise to the revocation hearing. Under these circumstances, any newly reported violations can, and should be considered under the same policies that the Commission will use in determining to grant the transfer applications under the *Second Thursday* doctrine.<sup>24</sup> To do otherwise would discourage

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<sup>23</sup> The *Second Thursday* doctrine is designed to accommodate the policies of federal bankruptcy law with those of the Communications Act and protect innocent creditors from losses by reason of a licensee's failure to abide by the rules. See *Second Thursday Corporation*, 22 F.C.C.2d 515, *recon. granted in part*, 25 F.C.C.2d 112 (1970).

<sup>24</sup> In *LaRose v. FCC*, the D.C. Circuit noted that where "a license has been involuntarily assigned to a receiver in bankruptcy, the conduct of the previous licensee is of only indirect relevance" to the receiver's ability to renew. 494 F.2d 1145, 1146 n.2 (D.C. Cir. 1974). The court also noted that in evaluating a petition for assignment of a license from a receiver to a new entity, the qualifications of the receiver and the bankrupt licensee are irrelevant under *Second Thursday*. 494 F.2d at 1148 & n.4. By analogy, the qualifications of MobileMedia and the outstanding compliance report should be irrelevant to the subject transfer to Arch. The Commission's inquiry should be limited to assessing "both the assignee's qualifications and the public interest considerations embodied by *Second Thursday*, which relate to the minimization of profit by the bankrupt parent-licensee." 494 F.2d at 1148.

licensees potentially subject to hearing designation orders from volunteering to undertake the type of comprehensive review engaged in by MobileMedia, since any transferor may end up subject to a different standard for later-identified problems than the standard applied to the problems that lead to the hearing designation order.

Finally, the Bureau's suggestion that action on the transfer applications could be deferred pending completion of any enforcement proceeding holds the prospect for indeterminate delay, thereby injecting a level of uncertainty into the process that could jeopardize effectuation of the merger. Moreover, MobileMedia has been struggling in bankruptcy for almost two years, and any delay in allowing it to emerge as part of the Combined Company will necessarily delay realization of the many public interest benefits that will result from the transaction which the Bureau has identified. The transfer applications are now ripe for review and approval, and there is simply no reason to delay action on the transfer while enforcement actions are considered.

**B. If Resolution Of The Enforcement Questions Engenders Delay, Then The Transfer Applications Should Be Granted Now Without Prejudice To Any Subsequent Enforcement Action That May Be Taken**

As noted above, there are strong arguments and substantial precedent supporting an expeditious determination by the Commission that no further enforcement action against MobileMedia is warranted, particularly since any additional penalties assessed will be paid by innocent parties. Nonetheless, avoidance of delay in obtaining FCC approval for, and then consummating, this merger is of paramount concern to Arch, because delay creates uncertainties regarding completion of the transaction. Accordingly, should the Commission determine that a resolution of the appropriateness of enforcement will delay grant of the transfer applications, then Arch urges the Commission to grant the transfer applications now without prejudice to the Bureau's ability to take future enforcement actions and initiate future enforcement proceedings by reason of the newly reported violations. Under this proposal, the Commission could decide at some later date, after the final audit reports have been filed and the Bureau has determined to recommend enforcement penalties, whether further enforcement against the licensee is still appropriate. At least by simply recognizing that some additional enforcement proceedings may be initiated by the Bureau upon completion of its study of MobileMedia's audit reports, the primary matter at issue — the public interest in approving the transfer of control of MobileMedia to the Combined Company — can be handled expeditiously, so that the merger can proceed as planned.

## **II. The Public Interest Requires That The Commission Allow Arch To Continue Operating The Facilities That Were Constructed By MobileMedia Without Proper Authority**

MobileMedia is currently operating some of its facilities under interim operating authority or special temporary authority. These include facilities that were not timely constructed but that MobileMedia was permitted to continue to operate on an interim basis.<sup>25</sup> In addition, violations may be uncovered during the course of MobileMedia's internal audit with respect to certain clearly unauthorized facilities that are or may become the subject of requests for special temporary authority.

In the transfer applications, Arch and MobileMedia requested that these facilities be transferred to Arch under standard license authority. Arch and MobileMedia argued that doing so would benefit the subscribers who receive service through these facilities by ensuring continuity of service, enabling the post-merger Arch to invest additional resources in these facilities, and allowing Arch to fully integrate them into its existing network. The Bureau opposes this request, however, arguing (1) that MobileMedia should have already migrated its subscribers from these facilities on to licensed facilities, and (2) that at least some of the frequencies being used on these facilities would be subject to competitive bidding.<sup>26</sup>

Arch continues to believe that the public interest would be served by allowing these heretofore unauthorized facilities to be transferred under standard license authority. If the Commission disagrees, Arch submits that, at a minimum, the Commission should allow Arch to

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<sup>25</sup> These facilities were listed in Attachment C of the Bureau's *Public Notice: Wireless Narrowband Branch Information*, 12 F.C.C.R. 792 (1997) ("January 13 Public Notice").

<sup>26</sup> Comments at 17-18.

continue to operate these facilities under interim operating authority until such time as an auction winner places facilities in service on these frequencies.<sup>27</sup> This approach will avoid disruption of service to MobileMedia's current subscribers and allow the Combined Company either to switch these subscribers to properly licensed facilities in an orderly manner or to participate in the auction process.

### **III. The Commission Should Grant The Request for Waiver Of The NPCS Spectrum Cap**

Arch and MobileMedia noted in the subject transfer applications that the combined company would hold an attributable interest in four Narrowband Personal Communications Service ("NPCS") licenses in a given geographic area, one more than allowed by Section 24.101 of the Commission's rules ("NPCS spectrum cap"). The transfer applications therefore sought a *temporary* waiver of the NPCS spectrum cap to permit the Combined Company to retain the extra license until 90 days after completion of a pending rulemaking proceeding ("NPCS Rulemaking") that sought comment on whether the spectrum cap should be modified or even eliminated.<sup>28</sup>

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<sup>27</sup> A similar approach was taken in granting neighboring cellular licensees interim operating authority for markets in which the tentative selectee was not found qualified. *See, e.g., MobileTel, Inc.*, 11 F.C.C.R. 19098, 19111 (1996), *aff'd*, 107 F.3d 888, *cert. denied*, 118 S. Ct. 366 (1997); *Metro Mobile CTS, Inc.*, 8 F.C.C.R. 8675, 8677 (1993), *aff'd sub nom., JAJ Cellular v. FCC*, 54 F.3d 834 (D.C. Cir. 1995); *La Star Cellular Tel. Co.*, 4 F.C.C.R. 3777, 3779-81 (1989), *aff'd*, 899 F.2d 1233 (D.C. Cir. 1990).

<sup>28</sup> Application at 12; *Amendment of the Commission's Rules to Establish New Personal Communications Services, Narrowband PCS*, GEN Docket No. 90-314, ET Docket No. 92-100, Report and Order and Further Notice and Proposed Rulemaking, 12 F.C.C.R. 12972, 12991 (1997) ("FNPRM").

In support of this request, the transfer application cited *Western PCS*,<sup>29</sup> but as the Bureau noted in its Comments, the waiver in that case was granted for a period lasting “until 90 days after adoption of a Report and Order in the Partitioning and Disaggregation Rulemaking or six months from the grant of the waiver, *whichever is earlier*.”<sup>30</sup> The Bureau correctly distinguished between the relief awarded in *Western PCS* with the waiver sought by the Combined Company.<sup>31</sup> Arch continues to believe, however, that grant of a *temporary* waiver pending completion of an ongoing proceeding that may eliminate the need for the Combined Company to divest spectrum is fully warranted. In any event, Arch requests that the Combined Company be afforded essentially the same relief made available to Western — namely an

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<sup>29</sup> *Request of Western PCS III License Corporation for Expedited Limited Waiver of Sections 20.6 and 24.204 of the Commission’s Rules*, Order, 11 F.C.C.R. 14487 (1996) (“*Western PCS*”).

<sup>30</sup> Comments at 16; *Western PCS*, 11 F.C.C.R. at 14488. Arch concurs with the Bureau that this extension was limited by its terms to a maximum of six months (Comments at 16) but respectfully notes that (i) Western was previously granted an interim 60-day extension, and (ii) Western has received subsequent extensions which, to date, have given Western more than two years in which to divest. See *Western PCS*, 11 F.C.C.R. at 14488 (referencing interim extension); *Order*, 13 F.C.C.R. 4081 (1997) (extending the waiver “for a period of either 90 days after the effective date of the new PCS partitioning and disaggregation rules or (2) August 4, 1997 (which represents nine months after adoption of the most recent extension granted to Western PCS”)); *Order*, 12 F.C.C.R. 11665 (1997) (extending the waiver “pending the release of an order disposing of Western’s request for permanent waiver”).

<sup>31</sup> Comments at 16. It appears, however, that the Bureau did not find an extension tied to the NPCS Rulemaking warranted because it felt that the rulemaking “does not directly seek comment on eliminating the Narrowband PCS spectrum cap. Rather, it seeks comment on relaxing disclosure requirements.” Comments at 14 n.43. The NPCS Rulemaking did seek comment, however, on elimination of the NPCS spectrum cap. Specifically, the Commission proposed to license one MHz of NPCS reserve spectrum and, in light of this proposal, sought “comment on whether these aggregation limits on Narrowband PCS spectrum are appropriate, or if we need to modify, increase *or eliminate* such aggregation limits.” *FNPRM*, 12 F.C.C.R. at 12991-92 (emphasis added). A half dozen parties filed comments and/or reply comments addressing this issue.



extension of time to comply with the divestiture requirements lasting 90 days after adoption of an Order in the NPCS Rulemaking, or six months after consummation of the subject transaction, whichever is earlier.<sup>32</sup> At a minimum, Arch requests that it be afforded a maximum of six months from the date of consummation in which to divest.

**IV. The Commission Should Grant The Combined Company's Request To Exceed The Foreign Ownership Limit Consistent With The Requirements Of The *Foreign Participation Order***

With regard to Arch's request for waiver of Section 310(b)(4) of the Act, the Bureau recommends approval of the merger conditioned "on Applicants' compliance with the Commission's *Foreign Participation Order* and all procedures established by the International Bureau."<sup>33</sup> For the reasons discussed in the transfer applications, Arch's request to exceed the 25% statutory benchmark for indirect foreign ownership fully complies with the *Foreign Participation Order* and the International Bureau's procedures and is consistent with

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<sup>32</sup> The six-month extension should commence upon consummation because, just as Western was given up to six months to own interests in excess of the cap, the NPCS spectrum cap will not be exceeded here until the Combined Company comes into existence. Arch also notes that the Bureau did not believe that Applicants satisfied the requirements of Section 24.819(a)(1) simply by relying on a pending rulemaking addressing the need for the NPCS spectrum cap. This criticism may have been appropriate if Arch sought a permanent waiver, but it is misplaced where Arch merely seeks an extension of the divestiture requirement pending a reevaluation of the need for the NPCS spectrum cap. Under the latter scenario, Arch believes that the requirements of Section 24.819(a)(1)(ii) are satisfied. As noted in *Western PCS*, an extension of spectrum divestiture requirements is consistent with the public interest where a pending rulemaking may have a material impact on the need for divestiture or the divestiture options available to a licensee. See *Western PCS*, 11 F.C.C.R. at 14488.

<sup>33</sup> Comments at 19-20 (citing *Foreign Participation Order*, 12 F.C.C.R. 23891, 23906, 24032-33 (1997)).

Commission precedent.<sup>34</sup> Furthermore, like any other Title II common carrier licensee, Arch will remain subject to the requirements of the *Foreign Participation Order* and the International Bureau's procedures with respect to its foreign ownership. Thus, it is clear — and the Bureau apparently agrees — that the public interest will be served by grant of Arch's Section 310(b)(4) waiver request.

## CONCLUSION

For the reasons stated, Arch submits that the subject transfer applications are ripe for grant no later than January 15, 1999, and that, consistent with Commission policy and precedent, no additional enforcement action against MobileMedia need or should be taken. In the event, however, that resolution of the enforcement questions would engender delay, Arch requests that the transfer applications nonetheless be granted expeditiously, but without prejudice to any further enforcement actions that may be forthcoming. Arch submits further that it should be granted interim operating authority with regard to facilities now being operated by MobileMedia pursuant to interim operating authority, and those facilities that are or may become the subject of requests for special temporary authority. Finally, Arch requests that it be granted a

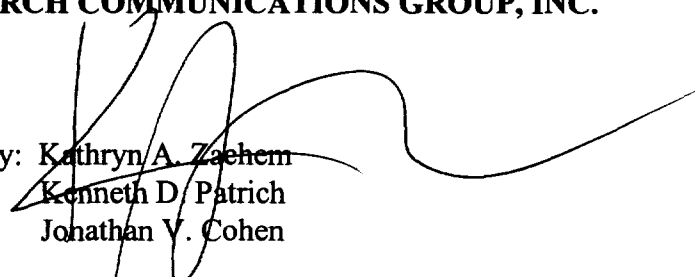
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<sup>34</sup> See Supplement to Application for Transfer of Control and Petition to Terminate and For Special Relief, Attachment B, Section 310(b)(4) Waiver Request, filed with the Commission on October 5, 1998 by MobileMedia Corporation, Debtor-In-Possession and Arch Communications Group, Inc.

temporary extension of the NPCS spectrum cap waiver as set forth above, and that its waiver to exceed the foreign ownership statutory benchmark be granted.

Respectfully submitted,

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November 27, 1998

## CERTIFICATE OF SERVICE

I, Marionetta Holmes, hereby certify that on this 27th day of November, 1998, copies of the foregoing "Reply Comments of Arch Communications Group, Inc." in WT Docket No. 97-115 were served via U.S. Mail, first class postage pre-paid, on the following:

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